

1

1 and attempting to bite the detectives. *See id.* at ¶¶ 23–28; *see also* Dkt. No. 21 at 6–7.

2 At issue in the current motion is the deemed admission of Defendants’ Request for
3 Admission (“RFA”) by Plaintiff’s failure to timely respond. Defendants served Plaintiff with their
4 RFA on November 15, 2019, making her response due by December 16, 2019. Dkt. No. 18 at 2;
5 Dkt. No. 19-2 (Defendants’ First Request for Admissions to Plaintiff September Krueger); Dkt.
6 No. 21 at 2. Plaintiff failed to timely respond, so Defendants sent a letter on December 20, 2019
7 stating that the RFA would be deemed admitted. Dkt. No. 19-4. Plaintiff, realizing her error,
8 immediately responded with the signed answer that day, and followed up with a letter on December
9 23, 2019 contesting the admission by default. Dkt. No. 18 at 2; Dkt. No. 19-5 (Plaintiff’s letter of
10 response).

11
12 Plaintiff admits she provided her responses to Defendants’ RFA late, but here seeks the
13 Court’s leave to amend or withdraw the deemed admissions so that she might deny the RFAs. Dkt.
14 No. 18 at 4–7; *see also* Dkt. No. 23 at 1. She further claims that Defendants are not prejudiced by
15 the four-day-late response. *Id.* at 5. Defendants respond that the Court should maintain the default
16 admission and that they are prejudiced by Plaintiff’s consistently late response to this and other
17 discovery obligations. *See* Dkt. No. 21 at 6–7. Further, should the Court grant Plaintiff’s motion,
18 Defendants move for fees and costs “stemming from [her] counsel’s error.” *Id.* at 7–10.

19
20 Under Federal Rule of Civil Procedure 36, “[a] matter is admitted unless, within 30 days
21 after being served, the party to whom the request is directed serves on the requesting party a written
22 answer or objection.” FED. R. CIV. P. 36(a)(3). But, “the court may permit withdrawal or
23 amendment [of an admission] if it would promote the presentation of the merits of the action and
24 if the court is not persuaded that it would prejudice the requesting party in maintaining or defending
25

1 the action on the merits.” FED. R. CIV. P. 36(b). The decision to permit an otherwise untimely
2 answer is firmly within the Court’s discretion. *French v. United States*, 416 F.2d 1149, 1152 (9th
3 Cir. 1968) (“[a] trial judge has discretion to permit a late response to a request for admissions made
4 pursuant to Rule 36 F.R.Civ.P., and thus relieve a party of apparent default”); *see also Conlon v.*
5 *United States*, 474 F.3d 616, 621 (9th Cir. 2007) (“Rule 36(b) is permissive, not mandatory, with
6 respect to the withdrawal of admissions”); § 2257 Time for Requests and Responses to Requests,
7 8B Fed. Prac. & Proc. Civ. § 2257 (3d ed.).


8
9 The Ninth Circuit has described the exercise of the district court’s discretion as a two-part
10 showing based on (1) preserving for the merits appropriate questions but weeding out aspects of
11 the case that can be agreed upon and (2) examining the prejudice to the party who obtained
12 the admission. *See Conlon*, 474 U.S. at 621–22; *see also Wu v. Home Depot U.S.A., Inc.*, No. 13-
13 civ-955, 2014 WL 12102179, at *1–*2 (W.D. Wash. Aug. 19, 2014).

14 Here, permitting Plaintiff to amend her admissions serves Rule 36’s purpose. Who
15 instigated the altercation is a key factual dispute around which much of this matter revolves.
16 Allowing this question to be resolved by default does not serve the ends of preserving resolution
17 of such disputes for the finder of fact. Further, Defendants do not claim significant prejudice as to
18 the four-day delay in which it took Plaintiff to provide her response. Instead, they claim injury
19 based on repeated delay. While the Court warns Plaintiff that continued delays will not be judged
20 lightly, there is no significant prejudice here in such a short delay, especially given the dire
21 consequences of the present admissions. As such, the Court hereby GRANTS Plaintiff’s motion
22 and excuses the untimely response to Defendants’ RFA.
23
24

25 Defendants contend that should the Court grant Plaintiff’s motion, it should award fees and

costs. The Court finds, however, this is not the appropriate circumstance for such sanctions.

DATED this 19th day of Feb, 2019.


BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE